

# PATENT COOPERATION TREATY

## PCT

### INTERNATIONAL PRELIMINARY EXAMINATION REPORT (PCT Article 36 and Rule 70)

REC'D 21 DEC 2004

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Applicant's or agent's file reference	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/EP 03/10420	International filing date (day/month/year) 18.09.2003	Priority date (day/month/year) 31.10.2002
International Patent Classification (IPC) or both national classification and IPC A23L1/30		
Applicant UNILEVER N.V. et al.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.


2. This REPORT consists of a total of 4 sheets, including this cover sheet.

☐ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the opinion
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand  01.03.2004	Date of completion of this report  20.12.2004
Name and mailing address of the international preliminary examining authority:   European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer  Popa, M  Telephone No. +49 89 2399-7829



**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT**

International application No. PCT/EP 03/10420

**I. Basis of the report**

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

**Description, Pages**

1-24 as originally filed

**Claims, Numbers**

1-8 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).  
☐ the language of publication of the international application (under Rule 48.3(b)).  
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.  
☐ filed together with the international application in computer readable form.  
☐ furnished subsequently to this Authority in written form.  
☐ furnished subsequently to this Authority in computer readable form.  
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.  
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:  
☐ the claims, Nos.:  
☐ the drawings, sheets:

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

*(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)*

6. Additional observations, if necessary:

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**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;  
citations and explanations supporting such statement**

**1. Statement**

Novelty (N)	Yes: Claims	1-8
	No: Claims	
Inventive step (IS)	Yes: Claims	1-8
	No: Claims	
Industrial applicability (IA)	Yes: Claims	1-8
	No: Claims	

**2. Citations and explanations**

**see separate sheet**

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT - SEPARATE SHEET**

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International application No. PCT/EP 03/10420

**Re Item V**

**Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

Reference is made to the following documents:

- D1: EP-A-1 180 545 (ASAHI DENKA KOGYO KK) 20 February 2002
- D2: US 2002/068095 A1 (VAN NORREN KLASKE ET AL) 6 June 2002
- D3: EP-A-1 155 699 (LABORATORIOS BIOSINETICA LTDA) 21 November 2001

The document D1 is regarded as being the closest prior art to the subject-matter of claim 1, and shows in examples margarines (W/O emulsions) comprising sterol fatty acid esters in amounts of ~10% (calculations) and folic acid in small amounts (0.00105 ppm, practically null) as derived from skim milk powder.

The difference is the amount of folic acid, 1.5ppm-1% claimed vs. 0.00105ppm in D1.

The subject-matter of claims 1, 7 and 8 is therefore new (Art. 33(2) PCT).

The problem to be solved by the present invention may be regarded as to increase the amount of folic acid in said emulsion. The effects of this difference are, according the applicant, the prevention of size reducing effect generated by the presence of sterol esters, an enhancing mouth feel and a better emulsion breakdown (both as direct consequences).

The solution to this problem proposed in claim 1 of the present application is considered as involving an inventive step (Article 33(3) PCT) as no hints can be found in prior art (D1-D3) to combine their separate features in order to achieve said effects.

The same reasoning applies *mutatis mutandis* to claims 7 and 8.

Claims 2-6 are dependent on claim 1 and as such also meet the requirements of the PCT with respect to novelty and inventive step.

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